IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 977 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

KHARVI BAI ZAVER MANDAN

Versus

HEIRS OF DECEASED HAJI AHMED VALIBHAI,
MARIYAMBAI HAJI AHMED & OTHERS

Appearance:
MR ND NANAVATI for Petitioner
MR BD KARIA for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT
Date of decision: 11/05/99

ORAL JUDGEMENT

1. This is a revision application under section 29(2) of the Bombay Rent Act at the instance of the original tenant.

2. The opponents-landlords had filed a suit before the Rent Court for a decree of eviction against the defendant-tenant under section 13 (1)(b) of the Bombay

Rent Act, alleging that the tenant has without the written consent of the landlords erected on the premises a permanent structure.

3. The defendant contested the suit by taking up a plea that due to a cyclone which hit the city of Porbandar, the roof of the tenanted premises suffered severe damage and thereby became open to atmosphere and the same required urgent repairs. According to the tenant therefore, she sought the permission of the landlord in writing for such repairs, and such permission was granted by the landlord in writing. The controversy on the evidentiary aspects of the matter rests around as to what was the permission sought by the tenant and what was the permission granted by the landlord.

4. Both the courts below have interpreted the tenant's notice exh. 35 requesting the landlords to carry out the repairs and also the landlords' reply exh. 36 in that context. Both the courts have found that the request made by the tenant was to carry out such repairs so as to render the residence fit for habitation whereas the landlords' reply is unambiguous and unequivocal. The landlord clearly stated that his economic situation is not good and that therefore, the tenant may carry out necessary repairs, however at the tenant's own cost for which the landlord would not be liable in any manner. However, it appears that the tenant instead of confining herself to the necessary repairs, extensively rebuilt the premises, which on the facts and evidentiary material on record, both the courts have found to have gone far beyond the necessary repairs, and have resulted in a fresh and new permanent construction.

5. In short, the concurrent findings of fact recorded are to the effect that the old roof which had suffered damage in the cyclone was a roof having slopes on two sides, supported by wooden sloping beams and also supported by vertical wooden supports. This old roof admittedly was neither intended to nor can it be supposed to bear any human traffic on its top side. The slope of this nature and of this type of construction was never intended to be used for any purpose on its upper surface. In fact, the rent note itself specifically recites in writing that the premises are in a dilapidated condition, and the roof is also in a dilapidated condition, and the tenant has chosen to occupy such property on her own volition. Under such circumstances, when the then existing roof was damaged in the cyclone and the tenant sought permission of the landlord to carry out necessary repairs, the best and most optimistic interpretation of

the landlords' reply could be that the tenant could get the roof repaired at her own cost and risk, so as to restore the same to its predamaged situation or existence.

6. As against this, the work carried out by the tenant under the so-called permission granted by the landlord is interesting to note, as factually found by both the courts below. Firstly, the damaged roof was removed and in its place, a terrace constructed of stone slabs suitably joined by cement and mortar was constructed. Access was obtained to this terrace by construction of a new staircase, which staircase was also covered. This new terrace was rendered suitable for human traffic and habitation by the construction of parapet walls, which were a vertical extension of the old walls which had formerly supported the old roof. Not being content with this, one of the walls of the old roof was raised substantially higher than the floor level of the new terrace by about 5 or 6 feet further, and the parapet walls of the terrace on the two sides of this new wall were also raised by another 5 or 6 feet to give rise to three walls enclosing a part of the terrace. These three walls between them enclosed approximately half the new terrace. These three walls were then covered over with another roof surfaced by what is commonly known as "Manglore Tiles". Thus, the net effect or the net difference between the old construction and the new construction would be that the sloping, dilapidated and already damaged roof which the tenant had accepted on rent with open eyes, was replaced by a terrace with pakka stone flooring, access thereto obtained by a covered staircase, and a substantially large shed type room completely covered on three sides as also the roof was constructed upon such terrace. It is further to be noted that the walls of the room constructed upon the new terrace are not merely brick walls, they are pakka walls with cement plaster on the inner side of the walls. Thus, both the courts have rightly found that not only is the new construction of a permanent nature, but also that it has been constructed without the permission of the landlords in writing. Both the courts were therefore justified in coming to a conclusion of fact that the tenant has by such construction rendered herself liable to eviction under the provisions of section 13 (1)(b) of the Rent Act.

7. Another aspect which requires to be noted, although the same has not been considered by the courts below possibly because it was not urged before them, is that the very act of the tenant in making such

construction without the written permission of the landlords also amounts to breach of terms of conditions of tenancy. The nature of the construction erected by the tenant on the facts clearly demonstrates that the tenant has expanded the leased premises by such construction and has gained an addition to the rented premises by way of an additional terrace, and an additional room by a covered staircase. Obviously, these were not the facilities extended to the tenant under the rent note nor were these premises as constructed by the tenant contemplated by the rent note. This clearly amounts to a substantial expansion of the leased premises on the part of the defendant. Obviously, it could not be contended that such an activity was permissible under the rent note since the rent note is silent upon the aspect of expansion of the rented premises. I merely note that this is an additional ground for sustaining the decree of eviction passed by the two courts below, while taking note of the fact that this aspect was not considered by either court perhaps because the same had not been raised before either of them.

8. The Supreme Court has laid down the scope and powers of the High Court while entertaining such revisions under section 29(2) of the Bombay Rent Act. In the case of PATEL VALMIK HIMATLAL & ORS Vs. PATEL MOHANLAL MULJIBHAI (1998 (2) G.L.H. 736) = AIR 1998 SC 3325) while approving and reiterating the principles laid down in its earlier decision in the case of HELPER GIRDHARBHAI Vs. SAIYED MOHMAD MIRASAHEB KARDI (AIR 1987 SC 1782) held that a High Court can not function as a court of appeal, can not re-appreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and can not interfere on grounds of inadequacy or insufficiency of evidence, and can not interfere, except in case where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse.

9. In the premises aforesaid, there is no substance in the present revision and the same is therefore dismissed with no order as to costs.

10. At this stage, learned counsel for the petitioner seeks time to vacate the premises. By consent of the other side, it is directed that the impugned decree shall not be executed upto 11th November, 1999, subject to a precondition that the petitioner-tenant files an undertaking in this Court on usual terms, latest by 11th June, 1999. It is clarified that no extension for filing such undertaking shall be sought nor granted. Direct

service is also permitted.

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